



June 4, 2019

James C. Justice, III  
President  
Bluestone Coal Corporation  
216 Lake Drive  
Daniels, WV 25832

Bluestone Coal Corporation  
P.O. Box 2178  
Beaver, WV 25813

**By Certified Mail – Return Receipt Requested**

**Re: 60-Day Notice of Intent to File Citizen Suit under the Clean Water Act and SMCRA for Violations at Bluestone's Red Fox Mine**

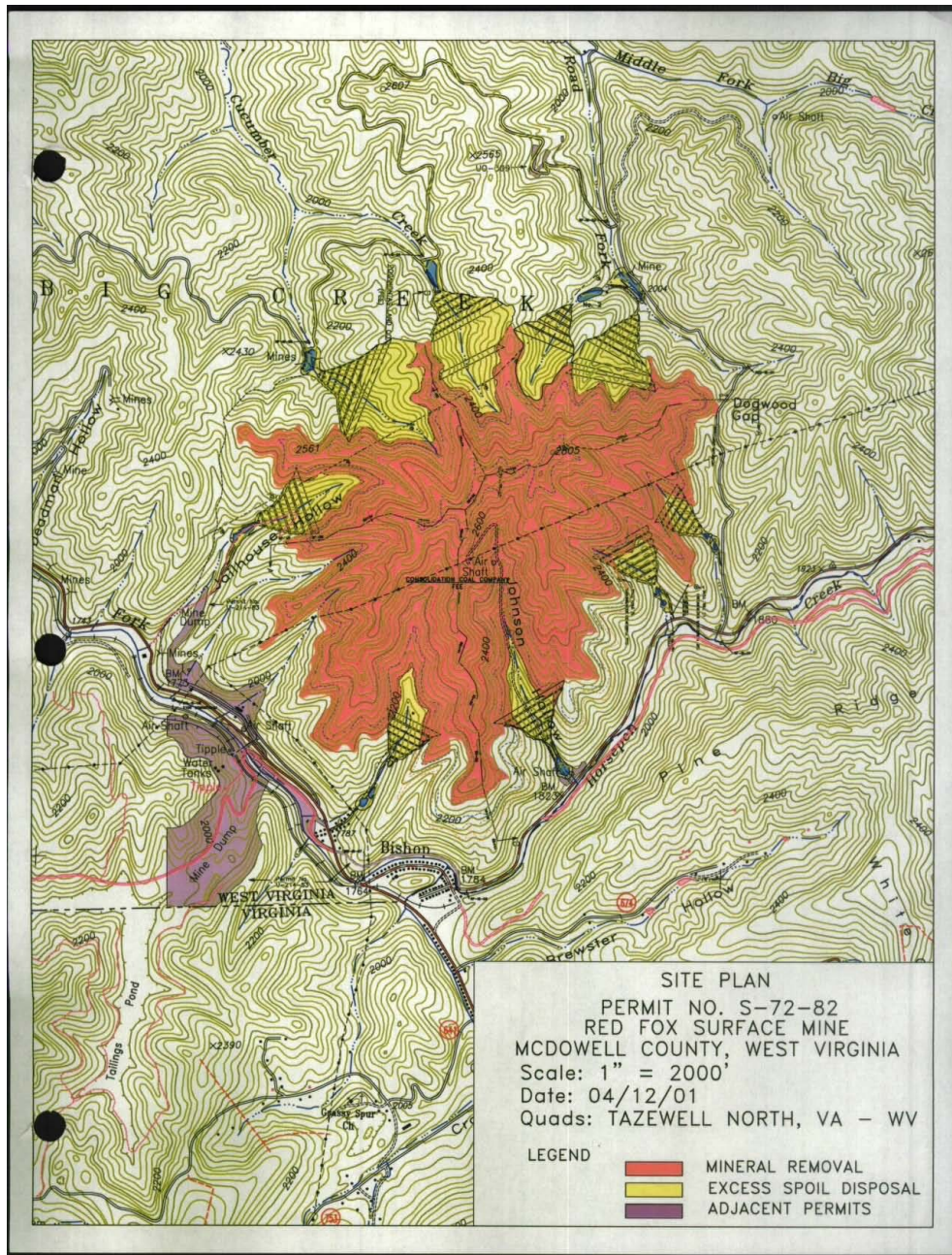
Dear Mr. Justice:

The Sierra Club, Ohio Valley Environmental Coalition, the West Virginia Highlands Conservancy, and Appalachian Voices (collectively "WV Environmental Groups"), in accordance with section 505(b)(1) of the Clean Water Act ("CWA"), 33 U.S.C. § 1365(b)(1) and 40 C.F.R. Part 135, hereby notify you that Bluestone Coal Corporation ("Bluestone") has violated and continues to violate "an effluent standard or limitation" under Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and (f)(6), by failing to comply with the terms and conditions of its WV/NPDES Permit No. WV1006304 issued by the West Virginia Department of Environmental Protection ("WVDEP") for its Red Fox Mine in McDowell County, West Virginia.

We further notify you, in accordance with section 520 of the federal Surface Mining Control and Reclamation Act ("SMCRA"), 30 U.S.C. § 1270; and 30 C.F.R. § 700.13 that Bluestone is in ongoing and continuing violation of certain federal and state regulations promulgated under SMCRA, the West Virginia Surface Coal Mining and Reclamation Act ("WVSCMRA"), and West Virginia mining permit S007282.

The mine is located above drainage north of Horsepen Creek just downstream from the town of Horsepen. Runoff from the site flows through intermittent tributaries south to Horsepen Creek, Big Creek to the north, and Cucumber Creek to the west. The combined runoff from the three streams eventually flow into Jacobs Fork, a tributary of the Tug Fork River, which flows generally north and northwest to the Ohio River.

The mine location is shown on the following Site Plan map:



### CWA Violations

Bluestone's water discharge activities at the Red Fox Mine are regulated under WV/NPDES Permit No. WV1006304. That permit was renewed on March 12, 2014 for a five-year term ending on August 13, 2018. On October 23, 2018, WVDEP extended the permit until February 13, 2019. On February 21, 2019, WVDEP again extended the permit, until August 13, 2019. The renewal permit initially required compliance with the limits on total recoverable selenium in Part A of the permit at Outlets 004-008 by June 13, 2016. On June 21, 2016, WVDEP modified the permit to extend that compliance deadline until June 22, 2018.

In its monthly discharge monitoring reports, Bluestone has reported violating its permit limits for total recoverable selenium in the following months and at the following outlets:

	Month	Out-let	Parameter	Limit	Units	Type	Reported	Units	% Over Limit
1	Jul-18	005	Se	4.7	ug/L	Avg	7.46	ug/L	59
2	Jul-18	005	Se	8.2	ug/L	Max	8.3	ug/L	1
3	Jul-18	006	Se	4.7	ug/L	Avg	7.18	ug/L	53
4	Jul-18	006	Se	8.2	ug/L	Max	8.87	ug/L	8
5	Jul-18	007	Se	4.7	ug/L	Avg	8.47	ug/L	80
6	Jul-18	007	Se	8.2	ug/L	Max	13.92	ug/L	70
7	Jul-18	008	Se	4.7	ug/L	Avg	7.59	ug/L	61
8	Jul-18	008	Se	8.2	ug/L	Max	14.02	ug/L	71
9	Aug-18	005	Se	4.7	ug/L	Avg	6.42	ug/L	37
10	Aug-18	006	Se	4.7	ug/L	Avg	5.62	ug/L	20
11	Aug-18	007	Se	4.7	ug/L	Avg	10.43	ug/L	122
12	Aug-18	007	Se	8.2	ug/L	Max	14.23	ug/L	74
13	Aug-18	008	Se	4.7	ug/L	Avg	9.86	ug/L	110
14	Aug-18	008	Se	8.2	ug/L	Max	12.41	ug/L	51
15	Sep-18	005	Se	4.7	ug/L	Avg	5.96	ug/L	27
16	Sep-18	006	Se	4.7	ug/L	Avg	6.05	ug/L	29
17	Sep-18	007	Se	4.7	ug/L	Avg	10.45	ug/L	122
18	Sep-18	007	Se	8.2	ug/L	Max	13.06	ug/L	59
19	Sep-18	008	Se	4.7	ug/L	Avg	9.56	ug/L	103
20	Sep-18	008	Se	8.2	ug/L	Max	11.93	ug/L	45
21	Oct-18	002	Al	0.43	mg/l	Avg	1.68	mg/l	291
22	Oct-18	002	Al	0.75	mg/l	Max	9.14	mg/l	1119
23	Oct-18	002	Fe	1.42	mg/l	Avg	3.24	mg/l	128
24	Oct-18	002	Fe	2.46	mg/l	Max	18.17	mg/l	639
25	Oct-18	002	TSS	35	mg/l	Avg	184	mg/l	426
26	Oct-18	002	TSS	70	mg/l	Max	1024	mg/l	1363
27	Oct-18	005	Se	4.7	ug/L	Avg	6.13	ug/L	30
28	Oct-18	006	Se	4.7	ug/L	Avg	5.79	ug/L	23
29	Oct-18	007	Se	4.7	ug/L	Avg	8.88	ug/L	89
30	Oct-18	007	Se	8.2	ug/L	Max	12.78	ug/L	56
31	Oct-18	008	Se	4.7	ug/L	Avg	9.41	ug/L	100
32	Oct-18	008	Se	8.2	ug/L	Max	12.02	ug/L	47
33	Nov-18	005	Se	4.7	ug/L	Avg	6.20	ug/L	32
34	Nov-18	006	Se	4.7	ug/L	Avg	6.24	ug/L	33
35	Nov-18	007	Se	4.7	ug/L	Avg	10.22	ug/L	117
36	Nov-18	007	Se	8.2	ug/L	Max	14.05	ug/L	71
37	Nov-18	008	Se	4.7	ug/L	Avg	8.67	ug/L	84
38	Nov-18	008	Se	8.2	ug/L	Max	11.72	ug/L	43
39	Dec-18	005	Se	4.7	ug/L	Avg	5.61	ug/L	19



40	Dec-18	006	Se	4.7	ug/L	Avg	5.44	ug/L	16
41	Dec-18	007	Se	4.7	ug/L	Avg	9.74	ug/L	107
42	Dec-18	007	Se	8.2	ug/L	Max	12.45	ug/L	52
43	Dec-18	008	Se	4.7	ug/L	Avg	8.08	ug/L	72
44	Dec-18	008	Se	8.2	ug/L	Max	9.77	ug/L	19
45	Jan-19	003	Se	4.7	ug/L	Avg	5.80	ug/L	23
46	Jan-19	005	Se	4.7	ug/L	Max	6.64	ug/L	41
47	Jan-19	006	Se	4.7	ug/L	Avg	5.87	ug/L	25
48	Jan-19	007	Se	4.7	ug/L	Avg	9.89	ug/L	110
49	Jan-19	007	Se	8.2	ug/L	Max	13.00	ug/L	59
50	Jan-19	008	Se	4.7	ug/L	Avg	8.46	ug/L	80
51	Jan-19	008	Se	8.2	ug/L	Max	10.67	ug/L	30
52	Feb-19	005	Se	4.7	ug/L	Max	5.60	ug/L	19
53	Feb-19	006	Se	4.7	ug/L	Avg	5.64	ug/L	20
54	Feb-19	007	Se	4.7	ug/L	Avg	10.23	ug/L	118
55	Feb-19	007	Se	8.2	ug/L	Max	13.06	ug/L	59
56	Feb-19	007	Se	8.2	ug/L	Max	9.10	ug/L	11
57	Feb-19	008	Se	4.7	ug/L	Avg	7.62	ug/L	62
58	Feb-19	008	Se	8.2	ug/L	Max	10.00	ug/L	22
59	Feb-19	046	Se	4.7	ug/L	Avg	5.95	ug/L	27
60	Feb-19	046	Se	8.2	ug/L	Max	8.70	ug/L	6

As a result of these violations, Bluestone is violating the deadlines in the compliance schedule in Part I.B of the permit for installation and completion of construction of the selenium treatment system and for achieving compliance with the selenium limits. Those constitute separate and additional permit violations.

The excessive selenium discharges are contributing to the impairment of the receiving streams. According to WVDEP's draft 2016 § 303(d) List (p. 28), Horsepen Creek and Big Creek are listed as impaired for selenium. The main stem of Tug Fork is also listed as impaired for selenium downstream from these tributaries at river mile 143.2 to RM 157.1.

The CWA authorizes citizens to sue “any person . . . who is alleged to be in violation of . . . an effluent standard or limitation under this chapter.” 33 U.S.C. § 1365(a)(1). An “effluent standard or limitation under this chapter” is defined to include “a permit or condition thereof.” *Id.*, § 1365(f)(6). A person who violates a condition of an NPDES permit is therefore in violation of the CWA and subject to a citizen enforcement action under the CWA. Based on Bluestone's discharge monitoring reports, we believe that Bluestone is violating the effluent limitations and compliance schedule in its permit. If Bluestone does not cease its violations within 60 days, we intend to bring a citizen suit against Bluestone under Section 505(a)(1) of the CWA seeking declaratory and injunctive relief.

#### SMCRA Violations

Violations of the Bluestone's NPDES permit are also violations of SMCRA and WVSCMRA. Section 506 of SMCRA prohibits surface coal mining without a permit from the Office of Surface Mining Reclamation and Enforcement ("OSMRE") or from an approved state regulatory authority. In West Virginia permits are issued by the WVDEP pursuant to WVSCMRA. WVSCMRA provides that "[a]ny permit issued by the director pursuant to this article to conduct surface mining operations shall require that the surface mining operations meet all applicable performance standards of this article and other requirements set forth in legislative rules proposed by the director." W.Va. Code § 22-3-13(a). In turn, WVDEP's regulations provide that "[t]he permittee shall comply with the terms and conditions of the permit, all applicable performance standards of the Act, and this rule." 38 C.S.R. § 2-3.33.c.

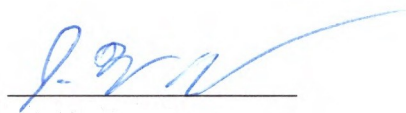
State and federal performance standards under SMCRA and WVSCMRA mandate that all discharges from permitted mining operations "be made in compliance with all applicable State and Federal water quality law and regulations and with the effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 C.F.R. § 434." 30 C.F.R. § 816.42; 38 C.S.R. § 14.5.b. Accordingly, violations of effluent limitations are violations of SMCRA, WVSCMRA, and Bluestone's mining permit S007282.

Like the CWA, SMCRA provides authority for citizens to sue "any . . . person who is alleged to be in violation of any rule, regulation, order or permit. . . ." 30 U.S.C. § 1270(a)(1). If within sixty days of the postmark of this letter Bluestone does not bring itself into full compliance with SMCRA, the WVSCMRA, and its permits the WV Environmental Groups will seek civil penalties for Bluestone's ongoing and continuing violations and for an injunction compelling Bluestone to come into compliance.

### Conclusion

If Bluestone has taken any steps to eradicate the underlying cause of the violations described above, or if Bluestone believes that anything in this letter is inaccurate, please let us know. If Bluestone does not advise us of any remedial steps during the 60-day period, we will assume that no such steps have been taken and that violations are likely to continue. Additionally, we would be happy to meet with Bluestone or its representatives to attempt to resolve these issues within the 60-day notice period.

Sincerely,



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